

*The Lord Bishop of Kildare, Dean of
the Cathedral Church of the Holy
Trinity, Dublin,* } Plaintiff in Error.

*His Grace the Archbishop of Dub-
lin,* } Defendant in Error.

The Defendant's CASE.

THE Plaintiff in Error brought his original Action upon a Prohibition in the Court of *Common-Pleas* in *Ireland*, where Judgment was given against him for the Defendant: which Judgment was, on a Writ of Error brought by the Plaintiff, affirmed in the *King's-Bench* in *Ireland*, and afterwards on a like Writ of Error affirmed in the *King's-Bench* in *England*, from which Judgment of the *King's-Bench* in *England* this Writ of Error is now brought.

The principal Question in the Cause was, Whether the Dean and Chapter of the *Holy Trinity Dublin*, within the Diocese of the Archbishop of *Dublin*, is visitable by the said Archbishop as Ordinary of the said Diocese.

The Case ariseth on special Pleadings, but chiefly is grounded upon the Plaintiff's Declaration.

That all Deans and Chapters being of Royal Foundation, ought by the Laws of *Ireland* to be governed according to the Rules in the Charters by which they are founded, and to be visited by the Chancellor of *Ireland*, or the King's Commissioners to be appointed in that behalf, and not otherwise; and ought not to be subject to the ordinary Visitation of any Archbishop or Bishop of *Ireland*, nor to be cited by any such Archbishop or Bishop at their ordinary Visitation. *The Plaintiff's Declaration sets forth.*

That no Royal Donative ought to be visited by any Archbishop, or Ecclesiastical Person having ordinary Jurisdiction, by virtue of such ordinary Jurisdiction.

That the Priory of the Church of the *Holy Trinity Dublin*, was an antient Priory, and of Royal Foundation; and the Church of the *Holy Trinity Dublin* was also of Royal Foundation.

That King *Henry* the VIIIth being seized in Fee, in right of his Crown of *Ireland*, of the said Priory, and of all the Lands, Tenements and Hereditaments belonging thereto, by his Letters Patent dated the 10th day of *May* in the 33d of his Reign, did Transpose and Change the said Priory and Convent of the Cathedral Church of the *Holy Trinity Dublin*, into a Dean and Chapter of the Cathedral Church of the *Holy Trinity Dublin*; and discharged the said Prior and nine Canons of the said Priory as well from their Rules as Habit, and enabled them to purchase to themselves and their Heirs, and the Heirs of each of them, Lands, Tenements and Hereditaments, as well Spiritual as Temporal; and that they should be reputed for secular Presbyters; and constituted the Prior, Dean one of the Canons, Chanter, another, Chancellor, another, Treasurer, and the six others, Vicars Choral, in the same Church; and incorporated the Dean, Chanter, Chancellor, Treasurer, and Vicars Choral, and their Successors, by the Name of the Dean and Chapter of the Cathedral Church of the *Holy Trinity Dublin*; and gave the said Chapter Power to assign what Lands, Tenements and Profits of the said Church, each of them should have, with other Clauses relating to their Orders and Government; saving to the King, his Heirs and Successors, the Nomination, Donation and Instalment of the Dean, Chanter, Chancellor and Treasurer, and their Successors.

That King *Philip* and Queen *Mary* by their Letters Patent, in the first and second Years of their Reign, reciting, That King *Edward* the VIth by his Letters Patent, did grant that the Officers of the said Church should be encreased to the number of six Presbyters, and two Chorister Boys, to serve during his Pleasure, and granted certain Pensions to each of the said Ministers and Choristers during his Pleasure: Did grant that the said six Presbyters, and two Choristers should continue for ever; and that the Dean and Chapter of the said Metropolitan Church of the *Holy Trinity Dublin*, should have the naming of the six Presbyters and two Choristers, and of all other inferior Officers in the said Church.

10 May, 33
Hen. 8.

1, 2 Philip
and Mary.

That

12 June, 2 Jac. 1.

That King *James I.* by his Letters Patent, bearing Date the 12th day of *June* in the 2d Year of his Reign, did constitute the said Church of the *Holy Trinity Dublin*, to be the Cathedral Church of the *Holy Trinity Dublin*, and changed the said Vicars Choral into Canonical Prebendaries, and the said six Presbyters into six Vicars Choral; and appointed the said Cathedral Church to consist of one Dean, one Chanter, one Chancellor, one Treasurer, three Canonical Prebendaries, six Vicars Choral, and four little Choristers; and constituted certain Persons by Name, Dean, Chanter, Chancellor and Treasurer, and three Prebendaries, viz. of *St. Michael in Dublin*, *St. Michael juxta Dublin*, and *St. John in Dublin*; and incorporated by the Name of the Dean and Chapter of the Cathedral Church of the *Holy Trinity Dublin*, with other proper Clauses of Incorporation, and granted and confirmed to the Dean and Chapter, and their Successors, as well the Cathedral Church as all Lands, Rectories, &c. which antiently belonged to the said Priory; and that the said Dean, Chanter, Chancellor, Treasurer, and three Prebendaries might each of them live the more decently and conveniently in his Degree and Dignity separately, he assigned to the Dean several Lands, to the Chanter other Lands, to the Treasurer other Lands, and to each of the several Prebendaries other distinct Lands; and that every one for himself should distinctly and separately have and enjoy all the Lands, Hereditaments and Possessions, as well Spiritual as Temporal, to him and his Successors separately, as before assigned, and that he might sue and be sued in whatsoever Court, and before whatsoever Judges or Justices, in all Causes, Actions, Suits and Demands severally concerning the same.

That by virtue of these Letters Patent, the said Dean and Chapter were a Body Politick, and have all along exercised the Power to them given, without any Intromission of any Archbishop of *Dublin*.

That the Deanery of the *Holy Trinity Dublin*, was lately vacant by the Translation of the late Bishop of *Kildare*, and Dean of the said Church; which Deanery the said late Bishop of *Kildare* held in *Commendam* to the See of *Meath*.

The late Queen by Letters Patent dated the 22d of *September*, in the fourth Year of her Reign, made the Plaintiff Dean of the said Church; by virtue of which said Letters Patent the Plaintiff is made Dean of the said Church, and has ever since enjoyed all the Rights and Privileges by the said Letters Patent granted.

That the Cognizance of Royal Grants belongs to the King and his Courts, and not to the Ecclesiastical Courts.

That the Archbishop, to aggrieve the Plaintiff, impleaded him as Dean of the said Church of the *Holy Trinity of Dublin* in the Court Christian, in *Causa Visitationis Ordinarii ipsius Archiepiscopi*, within his Diocese, as Archbishop of *Dublin*, under pretence of a Contempt in not appearing in the said Visitation of the said Archbishop, and duly undergoing the same.

Defendant's Plea.

The Defendant craves Oyer of the said several Letters Patent, and the same are set forth in *hac verba*: By which it appears that in the said Letters Patent, granted by King *Henry VIII.* it is further contained, That the said King did further will and declare, that the said Cathedral Church should be the Archiepiscopal Seat of *Dublin*, as it before was and used to be, prohibiting nevertheless the then Archbishop of *Dublin* and his Successors, that he or his Successors should presume to exercise other ordinary Jurisdiction or Authority than the same Archbishop formerly used to exercise there whilst it was a Priory.

And further saith, that the Archbishoprick of *Dublin* is an antient Archbishoprick, and that the Church of the *Holy Trinity Dublin* is an antient Church within the Diocese of *Dublin*, and time out of mind was the Cathedral Church of that Archbishoprick; and that the said Priory was an antient Priory, in which Priory lived the Canons of the Order of *St. Victor*, and of the Regulation of *St. Austin*, under one Prior, observing Canonical Rules, and doing divine Service; and that the said Prior and Canons time out of mind until their said Translation into a Dean and Chapter by King *Henry VIII.* and the said Dean and Chapter ever since were the Chapter of the Archbishops of *Dublin* for the time being; and that the Defendant and all his Predecessors Archbishops of *Dublin* time out of mind, by their ordinary Jurisdiction, have visited the said Prior and Canons till the said Translation, and the said Dean and Chapter ever since as often as there has been occasion.

The Defendant further saith, That the said Defendant then and yet being Archbishop of *Dublin*, the 8th of *March* 1710. at *St. Sepulchres* within the Diocese of *Dublin*, in the County of *Dublin*, did decree to hold a Visitation Ordinary of the said Dean and Chapter in the Chapter-House of the said Dean and Chapter, situate within the said Cathedral Church of *Dublin*, and being the usual Place for holding such Visitations, on the 9th of *April* 1711. according to Law, and according to the Manner and Custom aforesaid; and the Plaintiff in Error then and yet being Dean of

of the Cathedral Church of the *Holy Trinity Dublin*, was afterwards the 16th of *March 1710*. duly summoned and cited.

That the Defendant the said 9th of *April 1711*. between the Hours of ten and eleven in the Forenoon, being the usual Hour for making such Visitation, came to the Western Door of the said Cathedral Church, being the usual Place where the Dean, Prebendaries and other Officers, as often as they had Notice of such Visitation, used to wait the coming of the Archbishop, and being the usual Doors and Passage by which the Archbishops used to go to the said Chapter-house; but the said Doors were shut at the time of the Defendant's coming to them, and no other Passage to the said Chapter-house was open, so that the Defendant tho he was ready, and tried by all lawful Means, could not enter and go to the said Chapter-house to make his said Visitation there: whereupon the Defendant begun and held his said Visitation Ordinary of the said Dean and Chapter at the said Western Door of the said Church, being within the Diocese of *Dublin*; and tho the Plaintiff was duly summoned as aforesaid, and cited to appear and undergo the said Visitation Ordinary as was usual, and was solemnly called, yet he did not appear, nor would undergo the said Visitation; and thereupon the Archbishop pronounced him Contumacious in his said Visitation on the said 9th of *April 1711*. because there was no Passage open for the said Archbishop to make his said Visitation in the Chapter-House, and because the Defendant did not appear at the said Visitation; and then the Archbishop prorogued his said Visitation to *St. Patrick's Church Dublin*, being within the Diocese of *Dublin*, where such Proceedings were had, as in the Declaration set forth, as was lawful for the said Archbishop to do.

And then the said Archbishop concludes his Plea with a Traverse, or Denial that *Traverse*. the said Priory was of Royal Foundation.

The Plaintiff demurred specially to the Defendant's Plea; and after several Ar- *Demurrer*. guments Judgment was given for the Defendant, that he should have a Writ of Consultation.

The Plaintiff afterwards brought a Writ of Error in the *King's-Bench in Ireland*; and after several Arguments, the Judgment of the *Common-Pleas* was affirmed in the said Court of *King's-Bench*.

The Plaintiff afterward brought a Writ of Error in the *King's-Bench in England*; and after several Arguments there, both the former Judgments were affirmed.

The matter insisted on in the *King's-Bench in England* for Error was, that that part of the Archbishop's Plea whereby he Traverses, or denies that the Priory was of Royal Foundation, is immaterial and insufficient, which was shewn in the Dean's Demurrer for cause of Demurrer.

But by the Opinion of the Court, without any difficulty, the Traverse was resolved to be good.

The Dean in his Declaration sets forth, That Deans and Chapters of Royal Foundation, or Royal Donatives, are not subject to the Visitation of the Archbishop or Bishop.

Then sets forth that the Priory of the Church of the *Holy Trinity Dublin*, was of Royal Foundation.

Then shews the Translation of the Priory into a Dean and Chapter by King *Henry VIII. &c.*

It is conceiv'd that there is no Colour to say the Translation into a Dean and Chapter made by King *Henry VIII.* caused this Church to become a Royal Foundation; for the effect of that was only to discharge the Prior and Canons from Rule and Habit, and to change them from Regular into Secular Clergy; but all matters in respect of Visitation remain'd just as they were before, and the Archbishop might do every thing after the Letters Patent of Translation that he might do before.

If that be so, then the only material Fact alledged in the Declaration to exempt the Dean from the Visitation of the Archbishop is, that the Priory was of Royal Foundation, and this the Archbishop hath Traversed in his Plea; that is, deny'd it so as to put it in Issue to be tried, which Trial the Plaintiff hath by demurring declined. And this Traverse being taken upon the only Fact in the Declaration material to the point of the Cause must be good, or else the Declaration is naught; in either of which Cases the Judgment ought (as is humbly submitted) to be affirmed.

If the Archbishop hath a right to visit the Dean and Chapter, the manner of his Visitation will not be at all material in this Case, because any Error or Defect in the manner of Visitation may be remedied by Appeal, and is no Foundation for a Prohibition.

For

For these and other Reasons appearing in the Record, the Defendant the Archbishop of Dublin humbly prays this Honourable House to affirm the three several Judgments unanimously given in the Courts of Common-Pleas and King's-Bench in Ireland, and of the King's-Bench in England, with Exemplary Costs.

P. YORKE.

THO. REEVE.

The Dean of Dub-² Plaintiff.

Archbishop of } Defendant.
Dublin,

Upon a Writ of Error.

The Defendant's Cafe.

To be argued Tuesday the 21st of April
1724.

*Judgments affirmed
and do. Cor.*